MINORITY, ADDITIONAL, AND DISSENTING VIEWS—COMMERCE

MINORITY VIEWS WITH REGARD TO PROCEDURES ON RECONCILIATION OF THE HONORABLE JOHN D. DINGELL

The Budget Resolution for Fiscal Year 1998 provided just one week for the Commerce Committee to report reconciliation legislation that will determine how more than $3.6 trillion of the American taxpayer's money is spent over the next five years. The Committee worked diligently during that period and completed its action late on Thursday, June 12. The minority was informed that all Minority Views would be required to be submitted by close of business on Friday, June 13, when the House was in recess.

Obviously such a timetable creates problems in both the drafting of legislation, but also in the drafting of the report and Minority Views. It was virtually impossible to circulate any Minority Views for Members' signatures on Friday, a day that the House was in recess.

The Minority Views contained in this report are currently being circulated to Members. I urge my colleagues on the Budget Committee to include the names of all who subsequently sign these views, along with any additional views submitted by Members prior to the filing of the report by the Budget Committee on this legislation.

JOHN D. DINGELL.

MINORITY VIEWS ON TITLE III, SUBTITLE C—SALE OF DOE ASSETS

The provision directing the Department of Energy to sell uranium is fatally flawed because it fails to include the sort of fundamental protections the Committee historically has included in legislation requiring the sale of federal assets. As a result, the legislation could force DOE to sell stocks of surplus uranium at pennies on the dollar, depriving the taxpayer of a reasonable return on the value of this material.

Current law authorizes the Department to sell surplus uranium at fair market prices upon a finding that doing so will not adversely affect the market. However, under this authority DOE retains discretion to time sales so as to maximize proceeds. Thus, under current law, the Department would not be compelled to conduct a uranium fire sale in a depressed market.

The Committee Print denies DOE this common sense, necessary discretion. It requires DOE to sell specific amounts of uranium on a set schedule, at whatever the "fair market" price is at the specified time. While requiring fair market value is an element of a sound asset disposition program, it is not sufficient in and of itself. The Dingell-Pallone-Strickland amendment addressed this deficiency through a failsafe provision which would permit deferral of the sale if the Secretary and the Director of O.M.B. jointly determine that the sale would not achieve a price that reflects the full value of the uranium, or is not in the best interests of the United States. This is the same protection included in the 1996 Defense Authorization bill provision directing DOE to sell the Elk Hills Naval Petroleum Reserve. Similarly, the statute requiring privatization of the United States Enrichment Corporation provides a "failsafe" for unanticipated market conditions in the form of a final Presidential approval of the sale.

One other deficiency in the majority's approach warrants comment. The Committee has not held hearings or built any type of record in support of a policy to make mandatory DOE's existing discretionary statutory authority to sell uranium. Nonetheless, the majority report is replete with references to what the Committee "expects" with respect to implementation of this provision, what market conditions "are not expected", and what the Department "has indicated" it "projects" may occur in the future. There is no Committee record in support of these conclusions, or with respect to other conclusions the majority draws concerning the Elk Hills sale. In the absence of any Committee activity or record on these matters, such statements are unfounded, inappropriate, and inconsistent with the goal of a balanced budget.

JOHN D. DINGELL.
EDOLPHUS TOWNS.
DIANA DEGETTE.
BOBBY RUSH.
RICK BOUCHER.
THOMAS J. MANTON.
TOM SAWYER.
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MINORITY VIEWS ON TITLE III, SUBTITLE D—COMMUNICATIONS

The majority has perpetrated a ruse on the American people. At a hearing on spectrum auctions earlier this year Chairman Tom Bliley stated, "The annual budget cycle has begun once again and this means that quick-fix proposals involving the sale of spectrum emerge like snake oil salesmen at a local carnival."

Unfortunately, the Chairman was all too prescient. The Budget Resolution included reconciliation instructions to our committee to report legislation requiring spectrum auctions to raise $26.3 billion in revenues. There was not the slightest basis for such an estimate. At the hearing on spectrum auctions no testimony supported such a market for spectrum. Even worse, in order for the committee to seek auction revenues that can be "scored," the committee passed legislation which will actually reduce revenues flowing to the nation's taxpayers.

The rules of budget scoring have forced the Majority to write a bill that unnecessarily requires massive amounts of spectrum to be auctioned during the budget "window" of 1998–2002. Unfortunately, in order to achieve value for frequencies, there must be appropriate technologies available and ready to utilize the frequencies. The development and availability of emerging technologies is, however, not dictated by budget windows.

The recent Congressionally mandated auction of certain frequencies for wireless communications systems should give the Congress pause. That auction was estimated by CBO to achieve $1.8 billion in revenue, but the winning bids totaled just $13 million, or less than one percent of the estimate. One winning bidder bought the rights to market in 4 states with a population of 15 million for just 4 dollars. The reason for this spectacular failure was clear. First, the Commission failed to indicate more precisely the type of services the auctioned frequencies were to be for and this led to great uncertainty on the part of manufacturers as to what equipment to order. Second, the budget-drive timetable for holding the WCS auction did not allow potential bidders sufficient time to assess the markets, develop business plans, and find partners or financial backing. Third, the Commission was forced to auction specific frequencies and lacked the discretion to exercise its expertise to tailor the frequencies to be put out for bid to further serve the public interest. Finally, there was also a saturation of competitors and frequencies available in the marketplace.

It might have been easy for Members of our committee to ignore these facts, and report the proposals contained in the budget resolution, despite our doubts. However, many of us believed that we had a responsibility to inform our colleagues that a portion of the balanced budget agreement was built on assumptions that could not be met. Other parts of the budget, whether they are spending

increases or tax cuts, are real. In the case of spectrum auctions, the dollars to pay for them are as ephemeral as the airwaves themselves.

We now turn to the individual proposals in the spectrum auction legislation that are of particular concern.

Requirement to sell 120 megahertz of spectrum

The bill requires the Commission to identify 120 MHz of additional spectrum to auction over the next five years. The proposal raises several fundamental problems. First, as the failed auction described above proved, it is unwise for Congress to specify the frequencies to be auctioned years from now. That is a decision best left to the Commission. Second, the timing of auctions must be dictated by the marketplace. Unless there are new and valuable uses for the frequencies, the auctions will fail. Specifying a mandatory date for the sales will likely result in irrevocable losses to the taxpayer.

Third, the assumption that valuable frequencies are available was challenged in a letter to the committee from Commission Chairman Reed Hundt. He wrote on June 9, 1997, "Our engineers, in an extended effort, have been unable to identify that amount [100 MHz] of spectrum below 3 Gigahertz which could be auctioned for significantly more valuable uses." If the agency with expertise cannot find the spectrum, we do not understand the basis for the Budget Committee's assumption. Even CBO has now backed off of its estimates of the value of the 120 MHz. In response to questions from Ranking Member John D. Dingell, CBO Director June E. O'Neill wrote in a letter dated June 5, 1997, "Based on information from the FCC and the National Technology and Information Administration, however, we are concerned that it may be very difficult to identify 120 megahertz (MHz) of spectrum under 3 gigahertz (GHz) that could be reallocated and auctioned, as proposed by the President. . . . Subsequently, we received draft language prepared by the Administration for the spectrum proposals in the President's budget. We have not prepared an estimate for that draft language, but we have concluded that the portion of the language dealing with directed reallocation of 120 MHz is not specific enough to warrant the $9.7 billion in estimated receipts that we attributed to the President's budget."

Fourth, the mandatory reallocation of certain Federal frequencies without any testimony concerning the uses and the ability to reallocate the frequency raises further concerns. For example, it appears that some of the frequencies contained in section 3301(b)(1)(E) may be important for use by the FAA in airline safety.

Auction of analog spectrum

The legislation would establish a statutory date for the return of the analog broadcast spectrum of December 31, 2006. The date would be extended indefinitely, if in a given year more than 5% of households are not capable of receiving digital signals. The auction of the anticipated returned spectrum would begin in 2001.

This portion of the legislation creates the most serious problems. We do not oppose the auction of the returned analog spectrum.

However, the procedures in this legislation virtually guarantee that the taxpayer will be shortchanged. There is no logic to requiring the auction of the returned spectrum in the year 2001, more than 5 years in advance of the availability of the spectrum for use. The only justification for this arbitrary date is to meet a budget "window" of five years.

The Majority has chosen to establish a statutory date for the return of the spectrum, rather than leaving regulatory flexibility to the Commission, which has established a similar "target" date, which could be adjusted, as circumstances dictate. Recognizing the problem in setting a statutory date, the Majority included a statutory rule for delaying the return of the spectrum indefinitely, if five percent of households are incapable of receiving digital signals. This exception would likely result in the spectrum never being returned. It is almost certain to spark virtually no interest by bidders in 2001 for spectrum which may never be returned.

Sale and labeling of analog sets

During the consideration of the legislation, two amendments were offered relating to the sale of television sets. Ranking Member Edward J. Markey offered an amendment that would have prohibited the sale of sets that were incapable of receiving digital transmissions three years before the anticipated change to digital broadcasting. Rep. Elizabeth Furse subsequently offered an amendment to require that the Commission at least establish labeling requirements for new televisions that were unable to receive digital transmissions to inform purchasers that the set would not be capable of receiving transmissions without the addition of a converter when broadcasters converted to digital transmissions.

The bill approved by the Majority includes for the first time a statutory requirement that the analog spectrum be returned by December 31, 2006. This deadline may be extended, if 5% of households are not capable of receiving digital transmissions. It is only fair to the consumer that the consequences of this law be disclosed when they purchase a set that is not capable of receiving the digital signal mandated by this law. Otherwise, dealers could sell sets that could be obsolete in just months or a few years after they are sold.

The situation in no way resembles that of a technology becoming obsolete through market forces, such as eight-track tapes, as alleged by some opponents of these amendments. Analog televisions, in the absence of a converter, will become obsolete due to the government mandate contained in this law requiring the return of the analog spectrum, not due to market forces. If the Majority desires to establish a date upon which analog televisions should become obsolete, they should at least be willing to disclose their decision to buyers of television sets. Apparently, if consumers buy a television that soon becomes obsolete, the Majority intends, in Mission Impossible style, to "disavow any knowledge of its actions" on this legislation.

There is another budgetary consequence to the decision not to adopt these amendments. If manufacturers continue to sell sets not capable of receiving digital transmissions, and also fail even to inform purchasers of the potential obsolescence of the equipment, the

likelihood that more than 95% of households will be digitally-capable is reduced. Under the bill, the spectrum would not be returned under such conditions, and bidders at an auction occurring in 2001 will be less likely to bid anything for such spectrum.

Spectrum penalty

One of the more questionable instructions, based upon the Bipartisan Budget Agreement, and incorporated into the Budget Resolution, was entitled "Spectrum Penalty." The Budget Agreement stated, "As authorized by current law, a penalty fee would be levied against those entities who received 'free' spectrum for advanced, advertiser-based television services, but failed to utilize it fully." According to the Budget Agreement, this provision would be scored at $2 billion. The Budget Agreement also stated with respect to spectrum auctions, "Estimates for 1998-2002 were developed by the Congressional Budget Office."

Both the Majority and Minority were skeptical about how a provision already in current law could be scored by CBO as part of reconciliation. In response to questions by Ranking Member John D. Dingell concerning this provision, CBO Director June E. O'Neill on June 5, 1997 wrote concerning this "Spectrum Penalty," "CBO has not seen any legislative language regarding a spectrum penalty, and therefore we cannot comment on what the spectrum penalty would be and how much it would raise. In order to result in savings, it would have to mandate fees that would not be assessed under current law."

It therefore appears that the attribution of the Budget Agreement and Budget Resolution of $2 billion in scorable savings for fees authorized under current law to estimates by CBO was erroneous. There is no provision for such a Spectrum Penalty in the bill.

Tauzin amendment on target

During the consideration of the legislation, Subcommittee Chairman W.J. "Billy" Tauzin offered an amendment that would require the Commission to establish methodologies to carry out the auctions required under each section to achieve approximately 50% of the original CBO estimates for each category of auction. If the Commission failed to convince itself that such targets were achievable the auctions could be canceled. The amendment also gave the Commission the authority to establish minimum bids.

We agree that the Commission should have the authority to establish minimum bids and to cancel auctions if they are not in the public interest or will not achieve estimated revenue targets. The minority offered amendments on these matters that were defeated by the Majority. Our amendments, however, did not accept the arbitrary dates for auctions contained in the Majority bill. The target approach in the Tauzin amendment, while providing some flexibility to cancel auctions if they cannot achieve the unrealistic budget estimates, appears designed more to "pretend" that revenue estimates can be met than to provide true flexibility to the Commission.

Duopoly and joint-ownership rules

The Majority has also decided to use the Reconciliation legislation as an opportunity to reopen the bipartisan Telecommunications Act passed in the last Congress. Specifically, the legislation was amended to repeal the Commission's duopoly and cross-ownership rules with respect to the purchase of the returned analog spectrum for digital uses, an approach rejected in the conference on the Telecommunications legislation last year. Not only do we disagree with the merits of such an approach, but this decision is based upon no hearings or other testimony that the repeal of these rules is in the public interest. The committee has received no testimony in this Congress on the impact of this provision on various broadcasters, including minority broadcasters, nor was there testimony on the impact on the viewing public.

Summary

We preach the virtues of thinking and planning for the future, yet the forced sale of spectrum contained in this bill sets just the opposite example. We are squandering a scarce and valuable public resource by providing more spectrum for those services that are here and now, at the expense of emerging technologies that will be in higher demand and, not incidentally, more valuable to the public purse in the future.

During the consideration of this legislation the Minority sought to provide the Commission with the necessary flexibility to protect the taxpayers and auction the spectrum in the public interest. Our amendments would have achieved the maximum benefit for taxpayers and users of the spectrum, both in the short term and long term. Spectrum auctions must be based upon sound communications policy and should not be mandated to fill budget holes. The success of auctions based upon the 1993 reconciliation provisions, and the failure of the most recent auction on wireless communications, are proof that market conditions, and not government mandates establish the amount of revenues that can be achieved. Neither our proposals nor those of the Majority will provide $26.3 billion. Our proposals, however, would have provided a better opportunity to maximize the spectrum's value. We strongly encourage the Budget Committee to review its assumptions concerning spec-

trum auctions, as the legislative process continues. Otherwise, a balanced budget will be as real as the phantom revenues from spectrum auctions.

JOHN D. DINGELL.
ED MARKEY.
DIANA DEGETTE.
BOBBY RUSH.
RICK BOUCHER.
THOMAS J. MANTON.
GENE GREEN.
TOM SAWYER.
ANNA G. ESHOO.
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KAREN MCCARTHY.
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DISSENTING VIEWS ON TITLE 3, SUBTITLE D—TELECOMMUNICATIONS RECONCILIATION

It is with regret that I was not able to vote with the rest of my colleagues to support the telecommunications portion of the budget reconciliation bill that passed out of the Commerce Committee earlier this week. However, I could not support a bill that contained such unrealistic savings goals. It is not rational to believe that additional spectrum auctions will net $26.3 billion when the last spectrum auctions created a $2.886 billion shortfall.

JOE BARTON.

MINORITY VIEWS ON TITLE III, SUBTITLE E—MEDICAID

We applaud the majority for rejecting the ill-conceived notion of a block grant for Medicaid. Since Medicaid is America's second largest health care program, covering almost as many Americans as Medicare, it would have been irresponsible for Congress to support a program that had virtually no protections for the 36.8 million poor senior citizens, disabled people, women, and children that rely on Medicaid for their health and long term care services. We believe that the Republicans have once again learned that the approach of the last Congress—putting America's children, the elderly and disabled at risk—was the wrong way to go.

This year's Medicaid proposal maintains a number of the existing protections of current law for these important and vulnerable beneficiaries including: an appropriate benefits package for the 70 million children who need early preventive care, diagnosis and treatment. This is a sound investment because it saves on more expensive longer term adult care and treatment later; protections for the 6 million disabled individuals and approximately 7.4 million low-income women who are eligible for Medicaid; and protections for the elderly against impoverishment in their last years of life when they need nursing home care and cannot afford it themselves.

In addition, as the Republican proposal moved through the committee process several bi-partisan amendments adopted improved on the initial proposal: women will have direct access to their ob/gyn as their primary care provider; women and children will be guaranteed important quality standards for managed care plans; children who suffer from cerebral palsy, cystic fibrosis, cancer and a range of other debilitating diseases will have access to the specialized pediatric services they vitally need; and the public will have important fraud and abuse provisions for managed care plans in the areas of marketing and contract negotiations.

The minority is very disappointed, however, that the Republicans failed to live up to the budget agreement.

First, the budget agreement included an understanding that $1.5 billion would pay for premiums for low-income Medicare beneficiaries. This protection was vital to securing the over-all agreement that the costs of maintaining the Part B premium at 25% of program costs and the costs of switching home health to part B of Medicare would be phased into the premium payment. Because of these two provisions the part B premium for Seniors will increase by as much as $23.00 a month from 1997 to 2002. When this increase is added to the other increases incorporated into the budget agreement, the average elderly woman with an income less than $12,000 a year will see her Part B premium rise from $43.80 a month in 1997 to $66.70 a month in 2002. This extra cost of approximately $800 a year represents a substantial sum for those with incomes less than 150 percent of the poverty line. The com-

mittee included the savings from increasing the Part B premium, but did not include the agreed upon protections for low-income Seniors. Instead of providing $1.5 billion in protection, it provides only $600 million. To add insult to injury, the bill actually spends an additional $2.2 billion in Medicare funds on MSAs, which will hardly help low-income Seniors. Most MSAs include deductibles of up to $6,000, approximately half the annual income of a senior at 150 percent of poverty. The majority failed abjectly in this matter. The minority attempted several times in subcommittee and full committee to circumscribe this through amendments, and we intend to see that the terms of the agreement are honored as this legislation proceeds.

Second, the majority took direct action to refuse to provide health care services for disabled children eligible for SSI who were covered under terms of the agreement. At a time when the majority was attempting to proclaim that they were providing additional coverage to millions of uninsured children, they were at the same time taking away health insurance coverage from 20,000 disabled children. This is beyond our comprehension, and causes us to wonder whether the majority's idea is to provide insurance to the healthy but not the sick.

Finally, the majority repealed the so-called "Boren amendment," which provides payment protections for hospitals and nursing homes. The Boren amendment simply says that Governors must pay hospitals and nursing homes a "reasonable and adequate" payment to ensure the adequate provision of services. This provision is crucial to ensuring that we do not have a return to the disgraceful conditions that existed before our 1987 nursing home reforms when we found frail elderly and disabled individuals warehoused and abused in chronically substandard facilities. The Democratic minority worked successfully in subcommittee to restore this vital provision only to see it replaced by the Republicans in full committee with a meaningless public process.

For these reasons, the Medicaid provisions of budget reconciliation ultimately falls short in several key areas and fail to honor the terms of the budget agreement.

JOHN D. DINGELL.
SHERROD BROWN.
DIANA DEGETTE.
BOBBY RUSH.
RICK BOUCHER.
THOMAS J. MANTON.
GENE GREEN.
TOM SAWYER.
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ADDITIONAL VIEWS: GREENWOOD WAXMAN TITLE III(E) AND TITLE

In both the Medicare Plus and the Medicaid provisions of the bill, the Committee has adopted language ensuring that managed care organizations cannot limit the scope of the information and advice that physicians may give to patients.

This provision is, however, limited by a construction clause contained within it. In that clause, it is made clear that the provision is not to be interpreted to require a health maintenance organization to "provide, reimburse for, or provide coverage of" any counseling or referral service if the HMO has moral or religious grounds for doing so and if the HMO gives its enrollees and prospective enrollees advance notice of its unwillingness to provide such counseling and referral.

In our view, the intention of the Committee in adopting this language was to make clear that health plans that are religiously controlled do not have to disregard their religious or moral beliefs in order to participate in Medicare Plus or Medicaid. Further, we believe there is no rationale for extending the reach of this provision to include HMOs that are public, non-profit secular, or for-profit secular organizations. We believe the committee does not intend to allow such organizations to assert such religious or moral objections in order to side step what is required of them by the statute, regulations or contract.

JAMES GREENWOOD.
HENRY A. WAXMAN.

TITLE III—SUBTITLE E

ADDITIONAL VIEWS ON DISPROPORTIONATE SHARE HOSPITAL (DSH) FORMULA

The undersigned members of the Commerce Committee strongly protest the Committee-approved formula on disproportionate share hospital (DSH) payments.

We are compelled to do so because the formula contained in the Committee bill—intended to produce $15.7 billion in savings over five years—will lead to punitive cuts in those states defined as "high-DSH" states; that is, states that send 12% or more of medical assistance payments on DSH.

There is no one approach that we would favor or that we would deem fair. Low-DSH states have a legitimate point when arguing against taking the same percentage cuts as high-DSH states. However, the approach we favored at the Committee mark-up has the merit of recognizing that some high-DSH states are particularly dependent on DSH funding and they should not bear the entire impact of these cuts.

The argument that the burden of DSH cuts squarely on the backs of high DSH states cannot be denied. The formula passed by the Committee will start with modest cuts of two and five percent respectively in 1998 and 1999. Beginning in 2000, however, high-DSH states will receive 20 percent less than they received in 1997; in 2001, 30 percent less; and in 2002, 40 percent less. Low-DSH states, on the other hand, will face cuts at only half the yearly rate of high-DSH states.

In addition to higher yearly percentage cuts, high-DSH states are further burdened by the way the Committee has defined high-DSH states. The Clinton Administration originally proposed a formula using FY 1995 DSH payments to states as the basis for determining the starting point of reductions. During the development of the Committee bill, a change was made to the proposed formula that established FY 1997 as the starting point from which to classify high-DSH states. This change served to reduce the number of states that were classified as high-DSH and concentrated a higher level of reductions in fewer states. We believe that this change unfairly penalizes our states and confers advantages to other states. To address this inequity, we offered an amendment to change the DSH formula.

Our alternative, sponsored by Rep. Gene Green, was nearly identical to the Administration's proposal, the only change being a slight increase in the yearly percentage cuts. This change was made to achieve the same budget savings as the Committee version. The amendment exempted (as did the Committee-approved version) those states whose DSH spending was below 1 percent of medical assistance payments as of FY 1995. Then, for the years be-

ginning in 1999 and ending in 2002, it applied annual cuts of 10, 20, 25, and 35 percent respectively.

Notably, our amendment would apply those percentage cuts on a state's first 12 percent of DSH spending, the percentage spending level distinguishing high and low-DSH states. The Committee's version on the other hand, contains deeper cuts on the whole amount of DSH spending. This is a double blow to high-DSH states and demonstrates the one-sided nature of the Committee formula.

In summary, we do not regard the provision passed by the Commerce Committee as a sound way to manage the DSH program and we will continue to work to see that it is changed.

GENE GREEN.
DAN SCHAEFER.
DIANA DEGETTE.
JOE BARTON.
FRANK PALLONE, JR.
KAREN MCCARTHY.

ADDITIONAL VIEWS

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,

TITLE IV—COMMITTEE ON COMMERCE—MEDICARE

The Medicare program is one of the cornerstones of the public safety net that our Seniors and disabled citizens rely upon for critical health care services. During the development of the balanced budget agreement, Congress had the opportunity to address the fundamental structural problems associated with Medicare that have helped create the short and long-term solvency problems of the program. The budget agreement has been criticized on many fronts, but one of my primary concerns is that it fails to address the underlying structural problems of our major entitlement programs, opting instead for a short-term fix.

In the Commerce committee Medicare restructuring legislation, a commission was authorized to make specific recommendations to Congress on the financial impact to the program of the generation of Americans which will begin eligibility around 2010. I was pleased to see that the language establishing this commission was structured along similar lines to legislation I introduced, H.R. 75, the Medicare Commission Act of 1997.

Authorizing commissions, expert panels, and other entities to study and make recommendations has helped to guide past Congresses on difficult issues in the past. The most successful examples are the Base Closure Commission and the Social Security Commission of the early 1980s, from which a specific set of recommendations were developed and acted upon by Congress.

Congressional action must also occur on the recommendations of the Medicare Solvency Commission when it makes the report called for in this legislation during 1999. The future of the Medicare program requires us to address these problems in a timely manner, before the demographics of the Baby Boomer generation retirement are upon us. We should not require the emergence of a national crisis to spur Congress to action, and we should act to address the long-term solvency of the Medicare program in a deliberate manner as soon as practicable.

TITLE III SUBTITLE E—MEDICAID

Furthermore, my support for the repeal of the Boren amendment reflects the need to provide the states maximum flexibility in the administration of the Medicaid program. In addition to being consistent with the support of the President, the severe reductions in the Disproportionate Share programs necessitate additional flexibility for states.

KAREN MCCARTHY.

MINORITY VIEWS ON TITLE III, SUBTITLE F—STATE CHILD HEALTH COVERAGE

The Commerce Committee has taken important steps toward helping needy children get access to health care.

We are pleased to see that the Committee adopted, on voice vote, Rep. DeGette's proposal on presumptive eligibility for children. This is a valuable component of outreach for children. Allowing selected sites and providers to determine children to be presumptively eligible for Medicaid for one month, until their application can be completed and reviewed, is an important step to reaching the 3 million children who are currently eligible for Medicaid but are not enrolled. Presumptive eligibility cuts through some of the difficulties parents face in obtaining health insurance for their children through Medicaid.

We were also pleased to see the Committee adopt Rep. Strickland's amendment on exempting special needs children from mandatory enrollment in managed care. While the exemption is included in the Medicaid title, it protects all children with special needs. This exemption is particularly important because managed care systems have not been tested for their ability to serve those with chronic and disabling conditions.

However, while we have bipartisan agreement on those two items, we have a number of concerns with the approach taken to target the 5 million low-income children who are currently uninsured. We would have preferred to see another approach. In fact, the Democrats offered two alternatives.

We were particularly disappointed that the Republicans did not adhere to the budget agreement that specifically said that $16 billion for children's health must be spent on programs that provide *health insurance coverage* for low-income children. Under the Committee proposal as it now stands, States are not required to provide health insurance coverage for children. They could choose to do this, but there is no requirement in clear violation of the agreement between the Republican leadership and the Administration.

On this matter, we are particularly concerned with a large loophole that says that children's health money can be spent on "direct provision of services." Our experience with the disproportionate share hospital program (DSH) tells us that sometimes the funds that Congress turns over to the states do not always reach the intended beneficiaries. Congress did not intend for DSH moneys to fund state psychiatric hospitals, or roads, or prisons, but in some states that is exactly what happened. With the direct provision of services clause in the current bill, States could use all of their block grant money to buy drugs for sick children, or pay for psychiatric care in a state mental hospital, or pay for residential substance abuse treatment services for children in the juvenile justice system. These individuals who are receiving services through these programs and institutions are certainly worthy of federal support. But, we already have a number of federal programs that purchase direct services for children in this manner.

In fact, the block grant proposal, coupled with the large disproportionate share hospital cuts, provides incentives for states not to use their money to cover children but to invest it in particular

services. The states could target this children's health money directly to the facilities that will be losing DSH money through the cuts in the budget package.

The Commerce Committee Minority believes that there are options available to make sure that we are getting what we are intending to pay for: health insurance coverage for children. We believe that we put forth two solid proposals that would direct the funds for this purpose expressly: the Dingell-Brown proposal, and the Democratic Caucus proposal offered by Mr. Pallone.

The Dingell-Brown Child Health Insurance Provides Security Act, H.R. 1491, builds on the Medicaid program to expand health insurance coverage to children up to 150% of poverty. Three important points about this proposal should be kept in mind as the package moves towards conference.

First, the Dingell-Brown bill builds on an existing program that insures 22 million children and has succeeded at getting children access to medically necessary services. The beauty of this approach is in its simplicity. There is no need to create another complicated program layer with eligibility standards and benefits that differ from the current Medicaid program. This can only create confusion for states and beneficiaries alike, and could reduce access to care and services for children.

More importantly however, are the second two points; the Dingell-Brown approach targets children who most need help, and the Dingell-Brown approach would provide children with a comprehensive package of medically necessary benefits. The Dingell-Brown bill would reach children in families at or below 150% of poverty more than 75% of whom do not have private health insurance coverage.

Also, the Medicaid program provides a comprehensive package of medically necessary services for children, something the Committee-posed bill does not offer. Given that the money we have to spend is limited, to best reach our goal of covering 5 million currently uninsured children, the $16 billion must be targeted to the children who have the greatest need—those in families at or below 150% of poverty. We also believe that it is important to provide these children with true health insurance coverage, not "direct provision of services."

The Pallone approach contains a number of components that could help provide health insurance to children. First, it builds on the Medicaid program and adds the 'Medikids' grant program, similar to the Hatch-Kennedy proposal requiring states provide to benefits for children comparable to the Medicaid benefits package. This approach requires maintenance of effort, but gives states the flexibility: grant money could purchase private insurance, for example, but not the direct provision of services. This approach also contains private insurance reforms advocated by Rep. Furse which would make kids-only health insurance policies more accessible, especially for children in families with parents who were between jobs.

Either of these approaches would be preferable to the Committee bill.

Another issue of special concern is the majority's proposal to allow states to cap the number of children they enroll through the Medicaid program. All children who fall within a given eligibility

category should be allowed to receive benefits. Limiting the entitlement for Medicaid, even if it is only for a small population, is a dangerous precedent. The Commerce Minority would like to see this corrected.

A final issue in the area of children's health concerns is that money designated to restoring Medicaid eligibility for disabled children losing SSI because the new, stricter definition of childhood eligibility was not included in the package. The proposal was removed in favor of a block grant for certain, selected states to help with the unreimbursed cost of emergency services for immigrants. In a bill that was designed to increase health insurance coverage for up to 5 million children, we are taking away health insurance for 20,000 poor or near-poor disabled children.

We look forward to continuing to work in a bipartisan manner on the remaining outstanding issues that we have highlighted here.

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MINORITY VIEWS ON TITLE IV—MEDICARE

If the Medicare provisions of this budget reconciliation could be considered in isolation, a number of positive statements could be made about them.

For example, the provisions expand Medicare health care choices by allowing beneficiaries to enroll in a variety of managed health care plans, and also provide significant consumer protections within most of these plans. We applaud our Republican colleagues for recognizing the wisdom of carefully defining the terms of managed care for senior citizens who choose to receive their health care this way. The success of managed care in the Medicare market ultimately hinges on whether seniors are well served by the system: whether they have quality care, access to appropriate providers, bona fide appeals and grievance mechanisms, and honest marketing. Another protection, expanded by a Democratic amendment, allowing seniors to move into the managed care market without the penalty of losing forever their right to purchase a Medigap policy. In short, the majority wisely turned its back to the last Congress' approach of leaving America's seniors to the mercy of the health insurance marketplace.

The Committee's Medicare proposal also properly acknowledges the need to make both short-term payment changes and longer term policy modifications to address escalating Medicare costs and the solvency of the Medicare Trust Funds. The provisions attempt to provide judicious balance among payment reductions affecting various providers and to allow the establishment of new payment methodologies that provide for greater control and accountability. In addition, a number of important fraud and abuse protections, as proposed by the President, are contained in the legislation. Additional components of the President's proposal should be included, and we will pursue that goal as the bill moves forward.

However, the legislation continues penny- and pound-foolish: namely, including Medical Savings Accounts in the MedicarePlus program. Although the proposal is structured as a demonstration project, we continue to question the wisdom of spending over $2 billion to toss Medicare beneficiaries into totally uncharted waters, as an experiment. We already are testing MSAs in the younger, healthier general population through a demonstration program established under the Kassebaum-Kennedy legislation. That project is due to end, and to be evaluated, in 4 years. Why not wait until that evaluation concludes to begin an expansion of the experiment to Medicare beneficiaries?

Many differences of opinion on MSAs were expressed during Subcommittee and Committee deliberations. We argued that MSAs would appeal to and thus enroll younger, healthier Medicare beneficiaries—those who cost the Medicare program less—leaving older, less healthy people in "traditional" Medicare and increasing Medi-

care costs. This is one of the reasons that the Congressional Budget Office believes MSAs will cost, not save money. But the truth is, nobody knows about risk selection in MSAs. Thus, nobody can predict with any accuracy that MSAs will not have an enormous and adverse affect on Medicare costs over the long term. The Kassebaum-Kennedy demonstration will be the first opportunity to answer that question. We believe it would be prudent to wait for the results of that program. Alternatively, and at a minimum, we believe that any MSA demonstration program in Medicare must be much more limited than 500,000 lives. We attempted to circumscribe this through amendments, and intend to pursue a reduction in scope, or the elimination of the MSAs, as the legislation proceeds.

Our additional point: medical malpractice reforms—regardless of their substantive merits or lack thereof—do not belong in this legislation. Congressional decisions about federal malpractice liability standards that would pre-empt state laws and prerogatives deserve to be made in the light of separate deliberations. Committee hearings have not been held on this matter. We have not had an opportunity to mark up legislation. We have not had an opportunity for Members to debate their differing perspectives on this issue. We intend to continue our objection to including malpractice provisions in budget reconciliation.

In summary, we cannot isolate the Medicare provisions of budget reconciliation and look at their positive features separately. Indeed, we must look at the changes in this critically important program in the total context of a budget agreement that places America's senior citizens in the last car of a train and pulled by an engine of "balancing" the federal budget loaded with tax cuts for the wealthy. Many agree that Medicare spending needs to be curtailed, and the program needs to be changed—for its long-term good. And many would agree that savings of $115 billion improves upon the Republican proposal of the last Congress. However, reasonable senior citizens, and reasonable Democrats, continue to puzzle over a scheme that cuts Medicare while at the same time providing tax breaks for businesses and for higher-income individuals.

We are told that tax cuts will help the "middle class"—those whose incomes are $100,000 per year, or more. Since the majority of Medicare beneficiaries have incomes one-quarter of that amount—less than $25,000 per year—we are understandably skeptical of the trade-offs. Furthermore, the budget agreement between the President and the Republican leadership—for all of its flaws—included a "fail-safe" for the lowest income Medicare beneficiaries. It specifically included a commitment to spend $1.5 billion on helping these seniors pay their Medicare Part B premiums. The bills reported by this Committee do not honor that commitment. That failure colors all of what otherwise might be viewed as positive aspects of the Medicare portions of this package.

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